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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,461	03/26/2004	Barbara Z. Stawski	1391/1576	9327

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EXAMINER
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MAHAFKEY, KELLY J

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 05/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/810,461	<b>Applicant(s)</b> STAWSKI ET AL.	
	<b>Examiner</b> Kelly Mahafkey	<b>Art Unit</b> 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on November 17, 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21,30,31 and 33-36 is/are pending in the application.
- 4a) Of the above claim(s) 22-29 and 32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21,30,31 and 33-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION*****Election/Restrictions***

Applicant's election with traverse of Group 1, claims 1-21, 30, 31, and 33-36, a hard candy, in the reply filed on November 17, 2005 is acknowledged. The traversal is on the ground(s) that the alternative method (provided by examiner) to make the product of Group I and to distinguish the need for restriction between Groups I and II is actually the same method as recited in Group II, that the "narrow reading" of the claims was not appreciated by the examiner, that the alternative method (provided by examiner) to make the product of Group I and to distinguish the need for restriction between Groups I and III is actually the same method as recited in Group III, that it is not understood how the alternative method (provided by examiner) to make the product of Group I and to distinguish the need for restriction between Groups I and III would make the product of Group I, and that the Groups II and III are the same species and should be examined because they are both drawn to the same class and subclass.

Specifically regarding the restriction of Groups I and II and Groups I and II, this is not found persuasive for the following reasons.

Regarding the alternative method (provided by examiner) to make the product of Group I and to distinguish the need for restriction between Groups I and II, the alternative method is not the same method as recited in Group II, because the assembly process of making the product (as provided by examiner) includes preassembled components; the components which do not require cooking, a necessary step in the process of Group II.

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Regarding the alternative method (provided by examiner) to make the product of Group I and to distinguish the need for restriction between Groups I and III is different from the method as recited in Group III because it does not require vacuum cooking nor does it necessitate the need to form a jacketed rope.

Regarding how the alternative method (provided by examiner) to make the product of Group I and to distinguish the need for restriction between Groups I and III would make the product of Group I, as stated by examiner, the inner and outer shells of the hard candy could be formed by mixing one sweetened mass with a second sweetened mass that possessed a different cooling rate; the second sweetened mass would instantly cool when mixed into the first sweetened mass, thus forming the product of Group I.

Specifically regarding the restriction of Group II from Group III, applicant's arguments are persuasive and Groups II and III are rejoined.

The requirement (the restriction between Groups I and II and Groups I and III) is still deemed proper and is therefore made FINAL. Thus, claims 22-29, 32, and 37 are withdrawn by further consideration by the examiner, as being drawn to a non-elected invention.

### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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Claims 1-20, 30, 31, and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Hanke (WO 97/06695). The references and rejection are incorporated herein and as cited in the office action mailed November 17, 2005.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 6 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanke as applied to claims 1-20, 30, 31, and 33 above. The references and rejection are incorporated herein and as cited in the office action mailed November 17, 2005.

Claims 7, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanke in view of Bealin-Kelly (US 6306429 B1). The references and rejection are incorporated herein and as cited in the office action mailed November 17, 2005.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hanke in view of Klacik (US 4452825). The references and rejection are incorporated herein and as cited in the office action mailed November 17, 2005.

Claims 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanke in view of Linden and Lorient. The references and rejection are incorporated herein and as cited in the office action mailed November 17, 2005.

***Response to Arguments***

Applicant's arguments filed November 17, 2005 have been fully considered but they are not persuasive.

Regarding applicant's argument that Hanke does not disclose a jacketed hard candy, applicant is referred to the previous office action and Hanke Page 3 which states, "the confectionary product {the invention as disclosed by Hanke} can take various forms including *hard* and soft *candies*" and "the confectionary product {the invention as disclosed by Hanke} can have an outer coating of either the coolant or the flavor composition. The coating may be *continuous*, such as in a *centre-filled candy*". Thus, Hanke discloses of a centre-filled or jacketed candy that is hard both inside and outside, in which the jacket covers at least a majority of the core.

Regarding applicant's argument that Hanke does not disclose a candy containing an outer layer with one or more flavoring agents and an inner layer with one or more flavoring agents, applicant is referred to the previous office action paragraph 10, in which it is disclosed that Hanke teaches of, "the coolant composition or jacket contains 0.01-15%, preferably 0.5-10% of the cooling agent and minor levels of flavoring ingredients... Hanke discloses that the flavoring composition {the inner layer} contains preferably 0.4-1.5% flavoring and trace amounts of cooling agents."

Regarding applicant's argument that Hanke does not disclose the level of cooling agents in the outer layer being greater than the level of cooling agents in the core, applicant is reminded that Hanke discloses that the outer layer can be

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composed of the coolant composition (0.01-15% of a cooling agent) and the inner layer can be composed of the flavoring composition (trace amounts of a cooling agent). Refer to the previous office action, paragraph 10 and to Hanke Page 3 paragraphs 3 and 4, Page 7 paragraphs 3 and 4, Page 8 paragraph 1 and Page 10 paragraphs 1 and 2.

Regarding applicant's argument that Hanke does not disclose certain ratios of the weight of the core to the weight of the jacket, Hanke teaches that the invention (i.e. including a *hard candy product* as established above) has an outer layer or coolant composition of 5-15% and thus a core or flavoring layer containing 85-95% of the composition. Refer specifically to the previous office action paragraph 11 and Page 13 paragraph 3.

Regarding applicant's argument that there is no motivation to modify Hanke to form a jacketed hard candy, no modification is needed because the reference specifically discloses of a jacketed hard candy as discussed above.

Regarding applicant's argument that there is no suggestion for aspartame to be used in a jacketed hard candy (i.e. a hard boiled candy), Hanke teaches of a jacketed hard boiled candy as discussed above, that utilizes sucrose as a sweetener. Linden and Loren teach that aspartame has a sweetening power 200 times that of sucrose. Refer specifically to the previous office action paragraph 41, Linden and Lorient page 231 and Hanke page 8 paragraph 1. As stated in the office action, it would have been obvious to modify the jacketed hard boiled candy as disclosed by Hanke to include aspartame in order to get the same

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intensity of sweetness at a lower dosage (i.e. to use less materials and achieve the same affect, this saving money in the cost of production).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Mahafkey whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.




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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 4/27/06

Kelly Mahafkey  
Examiner  
Art Unit 1761

  
**KEITH HENDRICKS**  
**PRIMARY EXAMINER**